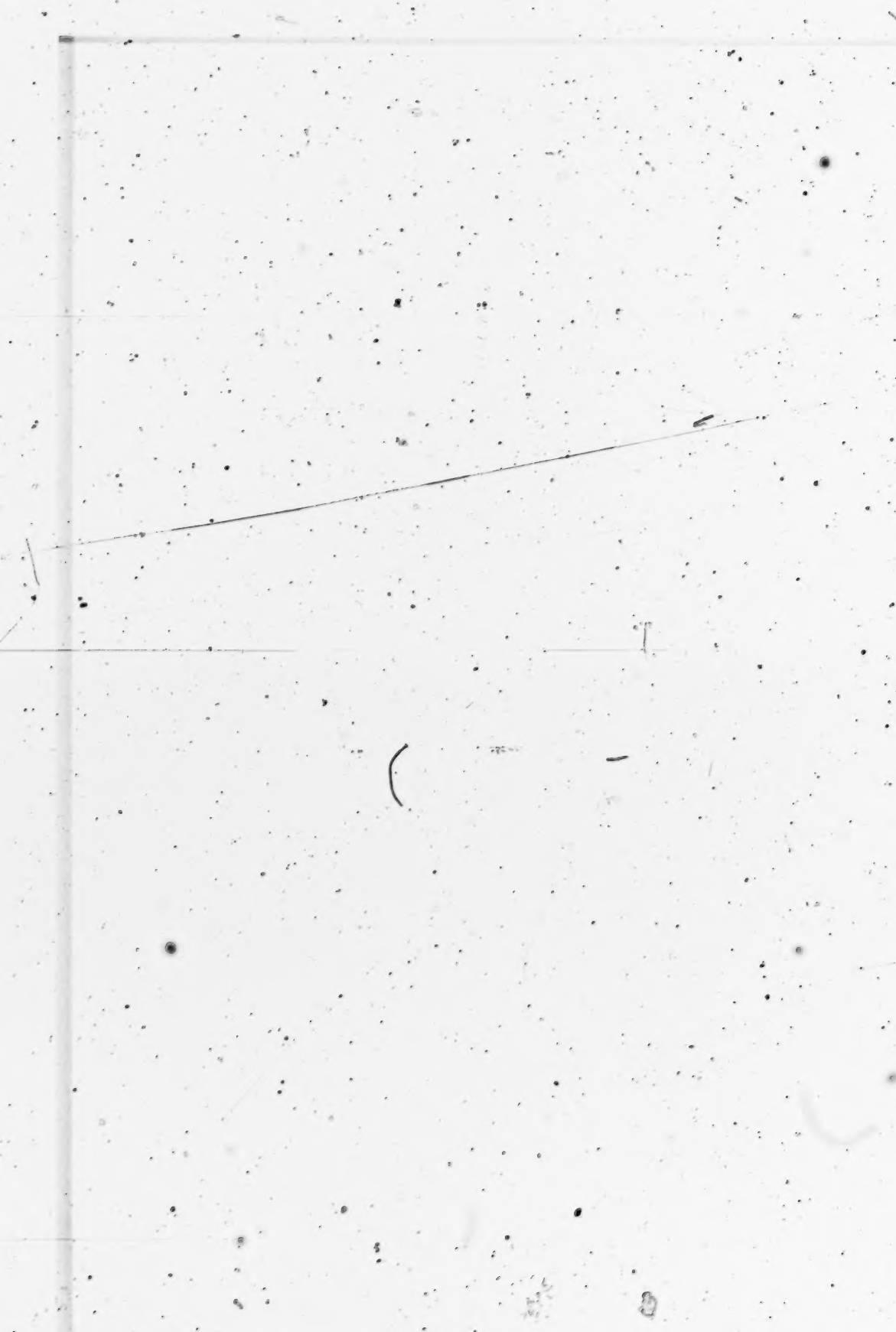

SUPREME COURT, U. S.
Office-Supreme Court
FILED
APR 16 1970
JOHN F. DAVIS, CLE

No. [redacted] 73

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

[redacted]

IDA PHILLIPS,

Petitioner,

v.

MARTIN MARIETTA CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF HUMAN RIGHTS FOR WOMEN, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1058

IDA PHILLIPS,

Petitioner,

v.

MARTIN MARIETTA CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF HUMAN RIGHTS FOR WOMEN, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

Pursuant to Rule 42 of the Rules of the Supreme Court, Human Rights for Women, Inc., by its counsel, moves the Court for leave to file a brief amicus curiae, and for reasons states as follows:

1. Human Rights for Women is a non-profit tax exempt corporation organized in the District of Columbia. Its purposes are to provide legal assistance in litigation involving rights of women under the law, to undertake research on issues relevant to discrimination against women, and to provide for educational projects on conditions concerning women. The issues in this case are highly significant in defining the rights of women under the law, a matter of central concern to Human Rights for Women.

2. Human Rights for Women is the first (and we believe only) tax exempt corporation which is devoted exclusively to problems of sex discrimination and which has furnished free legal counsel to women in Title VII cases. *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (C.A. 7, 1969); *Mengelkoch v. Industrial Welfare Commission*, 284 F.Supp. 950, 956 (C. D. Calif., 1968), appeal now pending in the Ninth Circuit. HRW filed a brief *amicus curiae* in the appeal of *Rosenfeld v. Industrial Welfare Commission*, 293 F.Supp. 1219 (C. D. Calif.), now pending in the Ninth Circuit. HRW attorneys furnished informal assistance and advice to plaintiff's counsel in the appeal of *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F.2d 228 (C.A. 5, 1969). Besides the instant case, these four cases are the most significant Title VII sex-discrimination cases to reach the appellate level to date.

3. This case involves important issues of interpretation of Title VII of the Civil Rights Act of 1964, which is designed to protect women against discrimination in employment because of sex. It is the first Title VII case involving sex discrimination to be considered on the merits by this Court. Neither the petition for writ of certiorari filed by counsel for Ida Phillips nor the supporting brief of the United States as *amicus curiae* on petition for writ of certiorari argues, as does the attached HRW *amicus* brief, that the "sex plus" theory of the Fifth Circuit in this case is wrong because under Title VII "sex" cannot be *even one* element in employment consideration. The Ida Phillips petition argues that sex plus the additional element (parent of preschool age children) has not been shown to be a "bona fide occupational qualification," while the United States' supporting brief argues that the employer has not shown that its rule against the combination of sex and pre-school age children is a "business necessity." These represent two different analyses of the issue in this case, both of which, we submit, are misleading. The HRW brief presents, in our opinion, the only correct interpretation of the essential meaning of the nondiscrimination provisions of the statute.

4. Although HRW is opposed to class discrimination in any form, believing that individuals should be judged on their own qualities and not pre-judged on the basis of presumed class characteristics, HRW's focus is on discrimination against the class of women. On the other hand, the interests and concerns of the attorneys for Ida Phillips have been primarily in the area of racial discrimination. The Justice Department, which represents the United States, has until the instant case devoted little of its concern and resources to the problem of sex discrimination and has concentrated mainly on race discrimination. It is necessary that the views of uncompromising advocates of sex equality be considered in this case to make certain that the Court is not misled into including in its decision dictum concerning the "bona fide occupational qualification" or "business necessity" which could hurt women in other Title VII cases as well.

5. Although attorneys for Ida Phillips have provided written consent to the filing of an *amicus* brief by Human Rights for Women, the attorney for Martin Marietta Corporation by letter dated April 7, 1970, declined to furnish such written consent, which has necessitated the filing of this motion.

WHEREFORE, Human Rights for Women, Inc. respectfully requests this Court to permit the filing of its *amicus curiae* brief, which is attached.

SYLVIA ELLISON

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Washington, D.C. 20044

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Motion of Human Rights for Women, Inc. for Leave to File *Amicus Curiae* Brief and its attached Brief of Human Rights For Women, Inc., as *Amicus Curiae* upon the parties in this case by mailing copies thereof, via air mail, in postage paid envelopes addressed as follows:

Jack Greenberg, James M. Nabrit, III, Norman C. Amaker, William L. Robinson, Lowell Johnston, and Vilma Martinez Singer, 10 Columbus Circle, New York, N.Y. 10019;

Earl M. Johnson, 625 West Union Street, Jacksonville, Florida 32202;

George Cooper, 435 West 116th Street, New York, N.Y.; and

J. Thomas Cardwell, P.O. Box 231, Orlando, Fla. 32802

This April , 1970.

Sylvia Ellison